

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 185

SENATE BILL 1402

AN ACT

AMENDING SECTIONS 44-1798, 44-1798.01 AND 44-1798.02, ARIZONA REVISED STATUTES; REPEALING SECTION 44-1798.03, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 11, ARTICLE 15, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 44-1798.03 AND SECTIONS 44-1798.04 AND 44-1798.05; RELATING TO SALES REPRESENTATIVE CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1798, Arizona Revised Statutes, is amended to read:

44-1798. Definitions; exemption

In this article, unless the context otherwise requires:

1. "Commission" means:

(a) Compensation accruing to a sales representative for payment by a principal, ~~which was earned through the last day on which services were performed by the sales representative,~~ the rate of which is expressed as a percentage of the dollar amount of orders or sales.

(b) ANY OTHER METHOD OF COMPENSATION AGREED TO BETWEEN A SALES REPRESENTATIVE AND A PRINCIPAL, INCLUDING FEES FOR SERVICES AND RETAINERS.

2. "Principal" means a person who ~~does not have a permanent or fixed place of business in this state and who~~ does all of the following:

(a) Engages in the business of manufacturing, producing, importing, SELLING or distributing a product— OR SERVICE.

(b) Uses sales representatives to solicit orders for the product OR SERVICE.

(c) Compensates the sales representative in whole or part by commission.

3. "Sales representative":

(a) Means a person who ~~contracts~~ DOES BOTH OF THE FOLLOWING:

(i) ESTABLISHES A BUSINESS RELATIONSHIP with a principal to solicit ~~wholesale orders from retailers rather than consumers and who is~~ ORDERS FOR PRODUCTS OR SERVICES.

(ii) IS compensated, IN WHOLE OR IN PART, by commission ~~only~~.

(b) ~~Sales representative does not include~~ IS NOT AN EMPLOYEE OR a person who places orders or purchases for his ON THE PERSON'S own account or for resale ~~or a person who is an employee of a principal.~~

4. "Termination" means the end of ~~services performed by~~ THE BUSINESS RELATIONSHIP BETWEEN the sales representative ~~for the principal, including any action that concludes the relationship of the parties~~ AND THE PRINCIPAL, WHETHER BY AGREEMENT, BY EXPIRATION OF TIME OR BY EXERCISE OF A RIGHT OF TERMINATION BY EITHER PARTY.

Sec. 2. Section 44-1798.01, Arizona Revised Statutes, is amended to read:

44-1798.01. Sales representative contract

A. ~~At the request of either party,~~ The sales representative and the principal shall enter into a written contract. THE CONTRACT SHALL SET FORTH THE METHOD BY WHICH THE SALES REPRESENTATIVE'S COMMISSION IS TO BE COMPUTED AND PAID.

1 B. The principal shall provide each sales representative with a signed
2 copy of the contract. The principal shall obtain a signed receipt for the
3 contract from each sales representative.

4 Sec. 3. Section 44-1798.02, Arizona Revised Statutes, is amended to
5 read:

6 44-1798.02. Termination of sales representative contract;
7 payment of earned commissions

8 A. If an agreement of services is terminated for any reason BOTH OF
9 THE FOLLOWING APPLY: --

10 1. All the commissions and ~~wages earned and unpaid~~ DUE through the
11 time of termination ~~are due~~ SHALL BE PAID TO THE SALES REPRESENTATIVE within
12 a period of not to exceed thirty days after termination.

13 2. ALL THE COMMISSIONS THAT BECOME DUE AFTER THE EFFECTIVE DATE OF
14 TERMINATION SHALL BE PAID TO THE SALES REPRESENTATIVE WITHIN FOURTEEN DAYS
15 AFTER THEY BECOME DUE.

16 B. THE PRINCIPAL SHALL PAY THE SALES REPRESENTATIVE ALL COMMISSIONS
17 DUE WHILE THE BUSINESS RELATIONSHIP IS IN EFFECT IN ACCORDANCE WITH THE
18 AGREEMENT BETWEEN THE PARTIES.

19 ~~B-~~ C. A principal who fails to comply with ~~subsection~~ SUBSECTIONS A
20 AND B of this section is liable to the sales representative for damages
21 ~~sustained by~~ IN THE AMOUNT OF THREE TIMES THE SUM OF THE UNPAID COMMISSIONS
22 OWED TO the sales representative ~~and the cost of suit, including reasonable~~
23 ~~attorney fees.~~

24 ~~C. This section does not invalidate or restrict any other right or~~
25 ~~remedy available to a sales representative or preclude a sales representative~~
26 ~~from seeking to recover in one action on all claims against a principal.~~

27 D. THE PREVAILING PARTY IN AN ACTION BROUGHT UNDER THIS SECTION IS
28 ENTITLED TO THE COST OF THE SUIT, INCLUDING REASONABLE ATTORNEY FEES.

29 E. COMMISSIONS SHALL BE PAID AT THE USUAL PLACE OF PAYMENT UNLESS THE
30 SALES REPRESENTATIVE REQUESTS THAT THE COMMISSIONS BE SENT BY REGISTERED
31 MAIL. IF, IN ACCORDANCE WITH A REQUEST BY THE SALES REPRESENTATIVE, THE
32 SALES REPRESENTATIVE'S COMMISSIONS ARE SENT BY MAIL, THE COMMISSIONS ARE
33 DEEMED TO HAVE BEEN PAID AS OF THE DATE OF THE REGISTERED POSTMARK ON THE
34 ENVELOPE.

35 F. UNLESS PAYMENT IS MADE PURSUANT TO A BINDING AND FINAL WRITTEN
36 SETTLEMENT AGREEMENT AND RELEASE, THE ACCEPTANCE BY A SALES REPRESENTATIVE OF
37 A COMMISSION PAYMENT FROM THE PRINCIPAL DOES NOT CONSTITUTE A RELEASE AS TO
38 THE BALANCE OF ANY COMMISSIONS CLAIMED DUE. A FULL RELEASE OF ALL COMMISSION
39 CLAIMS THAT IS REQUIRED BY A PRINCIPAL AS A CONDITION TO A PARTIAL COMMISSION
40 PAYMENT IS NULL AND VOID.

41 Sec. 4. Repeal

42 Section 44-1798.03, Arizona Revised Statutes, is repealed.

1 Sec. 5. Title 44, chapter 11, article 15, Arizona Revised Statutes, is
2 amended by adding a new section 44-1798.03 and sections 44-1798.04 and
3 44-1798.05, to read:

4 44-1798.03. Revocable offers of commission

5 IF A PRINCIPAL MAKES A REVOCABLE OFFER OF A COMMISSION TO A SALES
6 REPRESENTATIVE, THE SALES REPRESENTATIVE IS ENTITLED TO THE COMMISSION AGREED
7 ON IF ALL OF THE FOLLOWING APPLY:

8 1. THE PRINCIPAL REVOKES THE OFFER OF COMMISSION AND THE SALES
9 REPRESENTATIVE ESTABLISHES THAT THE REVOCATION WAS FOR A PURPOSE OF AVOIDING
10 PAYMENT OF THE COMMISSION.

11 2. THE REVOCATION OCCURS AFTER THE PRINCIPAL HAS OBTAINED AN ORDER FOR
12 THE PRINCIPAL'S PRODUCT OR SERVICE THROUGH THE EFFORTS OF THE SALES
13 REPRESENTATIVE.

14 3. THE PRINCIPAL'S PRODUCT OR SERVICE THAT IS THE SUBJECT OF THE ORDER
15 IS PROVIDED TO AND PAID FOR BY A CUSTOMER.

16 44-1798.04. Jurisdiction; no waiver; election of remedies

17 A PRINCIPAL WHO ESTABLISHES A BUSINESS RELATIONSHIP WITH A SALES
18 REPRESENTATIVE TO SOLICIT ORDERS FOR PRODUCTS OR SERVICES IN THIS STATE IS
19 DOING BUSINESS IN THIS STATE FOR PURPOSES OF JURISDICTION. A PROVISION IN A
20 CONTRACT BETWEEN A SALES REPRESENTATIVE AND A PRINCIPAL THAT PURPORTS TO
21 WAIVE A PROVISION OF THIS ARTICLE BY AN EXPRESS WAIVER OR A CONTRACT SUBJECT
22 TO THE LAWS OF ANOTHER STATE IS VOID. THIS SECTION DOES NOT INVALIDATE OR
23 RESTRICT ANY OTHER RIGHT OR REMEDY AVAILABLE TO A SALES REPRESENTATIVE OR
24 PRECLUDE A SALES REPRESENTATIVE FROM SEEKING TO RECOVER IN ONE ACTION ON ALL
25 CLAIMS AGAINST A PRINCIPAL.

26 44-1798.05. Applicability

27 THIS ARTICLE DOES NOT APPLY TO ANY OF THE FOLLOWING:

28 1. AN INDIVIDUAL OR BUSINESS ENTITY ENGAGED IN PROVIDING INSURANCE
29 PURSUANT TO TITLE 20.

30 2. A BANK, TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION,
31 CONSUMER LENDER OR FINANCIAL INSTITUTION ORGANIZED, CHARTERED OR HOLDING A
32 LICENSE OR AUTHORIZATION CERTIFICATE UNDER THE LAW OF THIS STATE, ANY OTHER
33 STATE, THE UNITED STATES OR THE PARENT, SUBSIDIARY OR AFFILIATE OF SUCH
34 ENTITY.

35 3. A PERSON WHO HOLDS A REAL ESTATE SALESPERSON'S LICENSE PURSUANT TO
36 TITLE 32, CHAPTER 20 AND WHO HAS A CLAIM FOR PAYMENT OF A REAL ESTATE
37 COMMISSION OR COMPENSATION AGAINST THE REAL ESTATE BROKER WITH WHOM SUCH REAL
38 ESTATE SALESPERSON IS AFFILIATED.

APPROVED BY THE GOVERNOR APRIL 21, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2006.